

Appl. No. 09/996,029
Amdt. dated February 3, 2004
Reply to Office Action of September 24, 2003

REMARKS/ARGUMENTS

This Amendment is submitted in response to the final Office Action mailed September 24, 2003. At that time, claims 1, 4, 6-21 and 29 were pending in the application. In the Office Action, the Examiner allowed claims 1, 4, and 6-15. However, claims 16-21 and 29 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,918,898 to Wallner et al. (hereinafter "Wallner"). By this paper claims 16 and 29 have been amended. Accordingly, claims 1, 4, 6-21 and 29 are presented for reconsideration by the Examiner.

Applicant would like to thank Examiner David R. Dunn for conducting a telephonic interview on December 10, 2003 with Applicant's attorneys Craig Metcalf (Reg. No. 31,398) and Matthew S. Bethards (Reg. No. 51,466). Rejected claims 16-21 and 29 were discussed, specifically in light of Wallner. Applicant proposed to amend claims 16 and 29 to recite that the sleeve "expands radially" instead of reciting that the sleeve is "capable of expanding radially." The Examiner agreed that the proposed amendment appeared to distinguish over Wallner. The Examiner indicated that the proposed amendment would be entered and the claims allowed subject to an updated search.

REJECTION OF CLAIMS 16-21 AND 29 UNDER 35 U.S.C. §102(b)

The Examiner rejected claims 16-21 and 29 under 35 U.S.C. §102(b) as being anticipated by Wallner. See Office Action, page 2. The Applicant respectfully traverses this rejection.

It is well settled that a claim is anticipated under 35 U.S.C. § 102(b) only if "each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP §2131, citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." MPEP §2131, citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). As a result of this paper, claims 16-21 and 29 include the limitation that the sleeve expands radially to form an

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exhaust passage when exhaust gas impinges against it. Such a limitation is not taught or disclosed by Wallner and as such, Wallner does not anticipate these claims under §102(b).

Wallner discloses a tubular diffuser (100c) formed from one piece of sheet metal. *See* col. 7, lines 36-39; Figures 6 and 7. The edges of the diffuser side walls (236, 246) overlap, forming a seam (248). *See* col. 7, lines 60-62; Figure 7. A diffuser chamber (254) exists between the seam (248) and the inflator (40c). *See* col. 8, lines 4-6; Figure 7. The Examiner suggests that the diffuser (100c) is "capable of" expanding radially to form an exhaust passage under a force of impinging exhaust gas "because any material will expand under a sufficient amount of force." *See* Office Action, page 2.

However the diffuser of Wallner will not expand radially *to form an exhaust passage* as claimed in the present application. Wallner does not teach that an exhaust passage is formed, let alone radial expansion of the diffuser sleeve, upon the application of impinging exhaust gas. Even if an inflator could produce a force strong enough to expand the material of the diffuser of Wallner, it does not necessarily follow that an exhaust passage will be formed. Consequently, Wallner does not provide an enabling disclosure of a diffuser sleeve expanding radially to form an exhaust passage.

Furthermore, the diffuser of Wallner is designed to *prevent* expansion of the diffuser walls, particularly at the seam. According to Wallner, the seam (248) is spot welded or otherwise secured. *See* col. 7, lines 62-63; col. 9, lines 1-2, 20. Securing the seam through welding prevents expansion of the sleeve to form an exhaust passage. Therefore, Wallner does not disclose every limitation recited in claims 16-21 and 29, and consequently, cannot anticipate under §102(b). Withdrawal of this rejection is respectfully requested.

Applicant respectfully asserts that claims 16-21 and 29 are patentably distinct from the cited reference, and requests that a timely Notice of Allowance be issued in this case. If there are any remaining issues preventing allowance of the pending claims that may be clarified by telephone, the Examiner is requested to call the undersigned.

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